

1 First Amended Complaint, defendant is without knowledge or information sufficient to form a
2 belief as to the truth of the averment and based thereon, denies, both generally and specifically,
3 each and every allegation contained therein, and specifically denies that defendant was involved
4 in any activity direct toward or involving plaintiff at all and that defendant did not engage in any
5 fraudulent, deceptive, and/or negligent acts and practices whatsoever.

6 2. In answer to the allegations contained in paragraph 2 of the Introduction of the
7 First Amended Complaint, defendant denies, both generally and specifically, each and every
8 allegation therein and answering defendant denies, both generally and specifically that defendant
9 is involved in any way in any action to foreclose on plaintiff's real property and/or any
10 foreclosure sale of plaintiff's real property. Defendant lacks information or belief sufficient to
11 admit or deny the allegations relating to plaintiff's claim for \$80,000 in costs, fees, and interest
12 and, based thereon, denies, both generally and specifically, said allegation. Defendant denies,
13 both generally and specifically, that defendant was involved in any exploitive and/or illegal
14 home loan made by plaintiff.
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16 3. In answer to the allegations contained in paragraph 3 of the Introduction of the
17 First Amended Complaint, defendant lacks information or belief sufficient to admit or deny any
18 of the allegations set forth there in and based thereon, denies, both generally and specifically,
19 each and every allegation contained therein.

20 4. In answer to the allegations contained in paragraph 4 of the Introduction of the
21 First Amended Complaint, defendant lacks information or belief sufficient to admit or deny any
22 of the allegations set forth there in and based thereon, denies, both generally and specifically,
23 each and every allegation contained therein.

24 5. In answer to the allegations contained in paragraph 5 of the Introduction of the
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1 First Amended Complaint, defendant lacks information or belief sufficient to admit or deny any
2 of the allegations set forth there in and based thereon, denies, both generally and specifically,
3 each and every allegation contained therein.

4 6. In answer to the allegations contained in paragraph 6 of the Introduction of the
5 First Amended Complaint, defendant lacks information or belief sufficient to admit or deny any
6 of the allegations set forth there in and based thereon, denies, both generally and specifically,
7 each and every allegation contained therein.

8 7. In answer to the allegations contained in paragraph 7 of the Introduction of the
9 First Amended Complaint, defendant lacks information or belief sufficient to admit or deny any
10 of the allegations set forth there in and based thereon, denies, both generally and specifically,
11 each and every allegation contained therein.

12 8. In answer to the allegations contained in paragraph 8 of the Introduction of the
13 First Amended Complaint, defendant denies, both generally and specifically, each and every
14 allegation contained therein and specifically denies that defendant was aware of any
15 investigation pertaining to defendant or received any communication by telephone from
16 Plaintiff's counsel on any matter, including that alleged, whatsoever.

17 9. In answer to the allegations contained in paragraph 9 of the Introduction of the
18 First Amended Complaint, defendant lacks information or belief sufficient to admit or deny any
19 of the allegations set forth there in and based thereon, denies, both generally and specifically,
20 each and every allegation contained therein.

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22 JURISDICTION AND VENUE

23 10. In answer to the allegations contained in paragraph 10 of the section of the First
24 Amended Complaint captioned JURISDICTION AND VENUE, defendant denies, both
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1 generally and specifically, each and every allegation contained therein and specifically denies
2 that this defendant regularly does business in the Northern District of California and therefore
3 denies that this Court has personal jurisdiction over this defendant based on said allegation.

4 11. In answer to the allegations contained in paragraph 11 of the section of the First
5 Amended Complaint captioned JURISDICTION AND VENUE, defendant denies, lacks
6 information or belief sufficient to admit or deny the allegations contained therein and based
7 thereon, denies, both generally and specifically, each and every allegation contained therein.

8 12. In answer to the allegations contained in paragraph 12 of the section of the First
9 Amended Complaint captioned JURISDICTION AND VENUE, defendant denies, lacks
10 information or belief sufficient to admit or deny the allegations contained therein and based
11 thereon, denies, both generally and specifically, each and every allegation contained therein and
12 specifically denies that defendant made any loan contract with plaintiff in the Northern District
13 of California or anywhere else.
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15 PARTIES

16 13. In answer to the allegations contained in paragraph 13 of the section of the First
17 Amended Complaint captioned PARTIES, defendant denies, lacks information or belief
18 sufficient to admit or deny the allegations contained therein and based thereon, denies, both
19 generally and specifically, each and every allegation contained therein.

20 14. In answer to the allegations contained in paragraph 14 of the section of the First
21 Amended Complaint captioned PARTIES, defendant denies, lacks information or belief
22 sufficient to admit or deny the allegations contained therein and based thereon, denies, both
23 generally and specifically, each and every allegation contained therein.

24 15. In answer to the allegations contained in paragraph 15 of the section of the First
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1 Amended Complaint captioned PARTIES, defendant denies, lacks information or belief
2 sufficient to admit or deny the allegations contained therein and based thereon, denies, both
3 generally and specifically, each and every allegation contained therein.

4 16. In answer to the allegations contained in paragraph 16 of the section of the First
5 Amended Complaint captioned PARTIES, defendant admits that defendant Executive Financial
6 Lending, Inc. was a California corporation, admitted and licensed to broker mortgage loans
7 under license number 01520578 issued by the California Department of Real Estate ("DRE")
8 with a principal place of business in Sherman Oaks, California. Except as specifically so
9 admitted, defendant lacks information or belief sufficient to admit or deny the allegations
10 contained therein and based thereon, denies, both generally and specifically, each and every
11 allegation contained therein.

12 17. In answer to the allegations contained in paragraph 17 of the section of the First
13 Amended Complaint captioned PARTIES, defendant admits the allegations contained therein.

14 18. In answer to the allegations contained in paragraph 18 of the section of the First
15 Amended Complaint captioned PARTIES, defendant admits that defendant Shai Moshe was at
16 all relevant times an employee of Executive and, except as specifically admitted herein,
17 defendant lacks information or belief sufficient to admit or deny the allegations contained therein
18 and based thereon, denies, both generally and specifically, each and every allegation contained
19 therein.

20 19. In answer to the allegations contained in paragraph 19 of the section of the First
21 Amended Complaint captioned PARTIES, defendant denies, lacks information or belief
22 sufficient to admit or deny the allegations contained therein and based thereon, denies, both
23 generally and specifically, each and every allegation contained therein.
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1 20. In answer to the allegations contained in paragraph 20 of the section of the First
2 Amended Complaint captioned PARTIES, defendant denies, lacks information or belief
3 sufficient to admit or deny the allegations contained therein and based thereon, denies, both
4 generally and specifically, each and every allegation contained therein.

5 21. In answer to the allegations contained in paragraph 21 of the section of the First
6 Amended Complaint captioned PARTIES, defendant denies, lacks information or belief
7 sufficient to admit or deny the allegations contained therein and based thereon, denies, both
8 generally and specifically, each and every allegation contained therein.

9 22. In answer to the allegations contained in paragraph 22 of the section of the First
10 Amended Complaint captioned PARTIES, except as admitted in paragraph 17 hereinabove,
11 defendant denies, both generally and specifically, that defendant is the agent and/or employee
12 and/or principal of each of the remaining defendants, and to the degree that any allegation is
13 made that any defendant acting by, through, or on behalf of defendant Executive Financial
14 Lending, Inc. acted in any improper manner, whether fraudulent, negligent, or otherwise,
15 defendant denies that such action constitutes any such defendant acting within the course and
16 scope of his or her or its agency and employment, with the knowledge, consent, or authority of
17 this answering defendant or that this answering defendant had any knowledge of any acts alleged
18 to be wrongful; defendant denies, both generally and specifically, that he had any knowledge of,
19 or constructive notice of, authorized or consented to, or ratified any acts by any other defendant
20 which are alleged to have been wrongful, improper, or illegal; and further, defendant denies, both
21 generally and specifically, that defendant retained or shared in the benefits of any such acts.
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23 23. In answer to the allegations contained in paragraph 23 of the section of the First
24 Amended Complaint captioned PARTIES, defendant denies both generally and specifically, each
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1 and every allegation contained therein and specifically denies that he entered into any agreement
2 or conspiracy with any other defendant to do any wrongful acts whatsoever.

3 24. . In answer to the allegations contained in paragraph 24 of the section of the First
4 Amended Complaint captioned PARTIES, defendant denies both generally and specifically, each
5 and every allegation contained therein.

6 GENERAL FACTUAL ALLEGATIONS

7 25. In answer to the allegations contained in paragraph 25, defendant repeats, re-
8 alleges, and incorporates by reference each and every response interposed to the allegations set
9 forth in paragraphs 1 through 24 inclusive.

10 26. In answer to the allegations contained in paragraph 26 of the First Amended
11 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
12 truth of the averment and basing his denial on said grounds, denies both generally and
13 specifically each and every allegation contained therein.

14 27. In answer to the allegations contained in paragraph 27 of the First Amended
15 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
16 truth of the averment and basing his denial on said grounds, denies both generally and
17 specifically each and every allegation contained therein.

18 28. In answer to the allegations contained in paragraph 28 of the First Amended
19 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
20 truth of the averment and basing his denial on said grounds, denies both generally and
21 specifically each and every allegation contained therein.

22 29. In answer to the allegations contained in paragraph 29 of the First Amended
23 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
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1 truth of the averment and basing his denial on said grounds, denies both generally and
2 specifically each and every allegation contained therein.

3 30. In answer to the allegations contained in paragraph 30 of the First Amended
4 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
5 truth of the averment and basing his denial on said grounds, denies both generally and
6 specifically each and every allegation contained therein.

7 31. In answer to the allegations contained in paragraph 31 of the First Amended
8 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
9 truth of the averment and basing his denial on said grounds, denies both generally and
10 specifically each and every allegation contained therein.

11 32. In answer to the allegations contained in paragraph 32 of the First Amended
12 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
13 truth of the averment and basing his denial on said grounds, denies both generally and
14 specifically each and every allegation contained therein.

15 33. In answer to the allegations contained in paragraph 33 of the First Amended
16 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
17 truth of the averment and basing his denial on said grounds, denies both generally and
18 specifically each and every allegation contained therein.

19 34. In answer to the allegations contained in paragraph 34 of the First Amended
20 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
21 truth of the averment and basing his denial on said grounds, denies both generally and
22 specifically each and every allegation contained therein.

23 35. In answer to the allegations contained in paragraph 35 of the First Amended
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1 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
2 truth of the averment and basing his denial on said grounds, denies both generally and
3 specifically each and every allegation contained therein.

4 36. In answer to the allegations contained in paragraph 36 of the First Amended
5 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
6 truth of the averment and basing his denial on said grounds, denies both generally and
7 specifically each and every allegation contained therein.

8 37. In answer to the allegations contained in paragraph 37 of the First Amended
9 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
10 truth of the averment and basing his denial on said grounds, denies both generally and
11 specifically each and every allegation contained therein.

12 38. In answer to the allegations contained in paragraph 38 of the First Amended
13 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
14 truth of the averment and basing his denial on said grounds, denies both generally and
15 specifically each and every allegation contained therein.

16 39. In answer to the allegations contained in paragraph 39 of the First Amended
17 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
18 truth of the averment and basing his denial on said grounds, denies both generally and
19 specifically each and every allegation contained therein.

20 40. In answer to the allegations contained in paragraph 40 of the First Amended
21 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
22 truth of the averment and basing his denial on said grounds, denies both generally and
23 specifically each and every allegation contained therein.
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1 47. In answer to the allegations contained in paragraph 47 of the First Amended
2 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
3 truth of the averment and basing his denial on said grounds, denies both generally and
4 specifically each and every allegation contained therein.

5 48. In answer to the allegations contained in paragraph 48 of the First Amended
6 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
7 truth of the averment and basing his denial on said grounds, denies both generally and
8 specifically each and every allegation contained therein.

9 49. In answer to the allegations contained in paragraph 49 of the First Amended
10 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
11 truth of the averment and basing his denial on said grounds, denies both generally and
12 specifically each and every allegation contained therein.

13 50. In answer to the allegations contained in paragraph 50 of the First Amended
14 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the averment and basing his denial on said grounds, denies both generally and
16 specifically each and every allegation contained therein.

17 51. In answer to the allegations contained in paragraph 51 of the First Amended
18 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
19 truth of the averment and basing his denial on said grounds, denies both generally and
20 specifically each and every allegation contained therein.

21 52. In answer to the allegations contained in paragraph 45 of the First Amended
22 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
23 truth of the averment and basing his denial on said grounds, denies both generally and
24 truth of the averment and basing his denial on said grounds, denies both generally and
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1 specifically each and every allegation contained therein and specifically denies that plaintiff is
2 entitled to damages in any amount whatsoever.

3 53. In answer to the allegations contained in paragraph 53 of the First Amended
4 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
5 truth of the averment and basing his denial on said grounds, denies both generally and
6 specifically each and every allegation contained therein.

7 SECOND CAUSE OF ACTION

8 54. In answer to the allegations contained in paragraph 54, defendant repeats, re-
9 alleges, and incorporates by reference each and every response interposed to the allegations set
10 forth in paragraphs 1 through 53 inclusive.

11 55. In answer to the allegations contained in paragraph 55 of the First Amended
12 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
13 truth of the averment and basing his denial on said grounds, denies both generally and
14 specifically each and every allegation contained therein.

15 56. In answer to the allegations contained in paragraph 56 of the First Amended
16 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
17 truth of the averment and basing his denial on said grounds, denies both generally and
18 specifically each and every allegation contained therein.

19 57. In answer to the allegations contained in paragraph 57 of the First Amended
20 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
21 truth of the averment and basing his denial on said grounds, denies both generally and
22 specifically each and every allegation contained therein.

23 58. In answer to the allegations contained in paragraph 58 of the First Amended
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1 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
2 truth of the averment and basing his denial on said grounds, denies both generally and
3 specifically each and every allegation contained therein.

4 THIRD CAUSE OF ACTION

5 59. In answer to the allegations contained in paragraph 54, defendant repeats, re-
6 alleges, and incorporates by reference each and every response interposed to the allegations set
7 forth in paragraphs 1 through 58 inclusive.

8 60. In answer to the allegations contained in paragraph 60 of the First Amended
9 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
10 truth of the averment and basing his denial on said grounds, denies both generally and
11 specifically each and every allegation contained therein.

12 61. In answer to the allegations contained in paragraph 61 of the First Amended
13 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
14 truth of the averment and basing his denial on said grounds, denies both generally and
15 specifically each and every allegation contained therein.

16 62. In answer to the allegations contained in paragraph 62 of the First Amended
17 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
18 truth of the averment and basing his denial on said grounds, denies both generally and
19 specifically each and every allegation contained therein.

20 63. In answer to the allegations contained in paragraph 63 of the First Amended
21 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
22 truth of the averment and basing his denial on said grounds, denies both generally and
23 specifically each and every allegation contained therein.
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specifically each and every allegation contained therein.

69. In answer to the allegations contained in paragraph 69 of the First Amended Complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the averment and basing his denial on said grounds, denies both generally and specifically each and every allegation contained therein.

70. In answer to the allegations contained in paragraph 70 of the First Amended Complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the averment and basing his denial on said grounds, denies both generally and specifically each and every allegation contained therein, and specifically denies that plaintiff is entitled to damages in any amount whatsoever.

71. In answer to the allegations contained in paragraph 71 of the First Amended Complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the averment and basing his denial on said grounds, denies both generally and specifically each and every allegation contained therein, and specifically denies that plaintiff is entitled to damages in any amount whatsoever.

72. In answer to the allegations contained in paragraph 72 of the First Amended Complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the averment and basing his denial on said grounds, denies both generally and specifically each and every allegation contained therein, and specifically denies that plaintiff is entitled to damages in any amount whatsoever.

73. In answer to the allegations contained in paragraph 73 of the First Amended Complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the averment and basing his denial on said grounds, denies both generally and

1 specifically each and every allegation contained therein, and specifically denies that plaintiff is
2 entitled to damages in any amount whatsoever.

3 74. In answer to the allegations contained in paragraph 74 of the First Amended
4 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
5 truth of the averment and basing his denial on said grounds, denies both generally and
6 specifically each and every allegation contained therein, and specifically denies that plaintiff is
7 entitled to damages in any amount whatsoever.

8 FIFTH CAUSE OF ACTION

9 75. In answer to the allegations contained in paragraph 75, defendant repeats, re-
10 alleges, and incorporates by reference each and every response interposed to the allegations set
11 forth in paragraphs 1 through 74 inclusive.

12 76. In answer to the allegations contained in paragraph 76 of the First Amended
13 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
14 truth of the averment and basing his denial on said grounds, denies both generally and
15 specifically each and every allegation contained therein.

16 77. In answer to the allegations contained in paragraph 77 of the First Amended
17 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
18 truth of the averment and basing his denial on said grounds, denies both generally and
19 specifically each and every allegation contained therein.

20 78. In answer to the allegations contained in paragraph 78 of the First Amended
21 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
22 truth of the averment and basing his denial on said grounds, denies both generally and
23 specifically each and every allegation contained therein.
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1 79. In answer to the allegations contained in paragraph 79 of the First Amended
2 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
3 truth of the averment and basing his denial on said grounds, denies both generally and
4 specifically each and every allegation contained therein.

5 80. In answer to the allegations contained in paragraph 80 of the First Amended
6 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
7 truth of the averment and basing his denial on said grounds, denies both generally and
8 specifically each and every allegation contained therein.

9 81. In answer to the allegations contained in paragraph 81 of the First Amended
10 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
11 truth of the averment and basing his denial on said grounds, denies both generally and
12 specifically each and every allegation contained therein.

13 82. In answer to the allegations contained in paragraph 82 of the First Amended
14 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the averment and basing his denial on said grounds, denies both generally and
16 specifically each and every allegation contained therein.

17 83. In answer to the allegations contained in paragraph 84 of the First Amended
18 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
19 truth of the averment and basing his denial on said grounds, denies both generally and
20 specifically each and every allegation contained therein, and specifically denies that plaintiff is
21 entitled to damages in any amount whatsoever.

22 84. In answer to the allegations contained in paragraph 84 of the First Amended
23 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
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1 truth of the averment and basing his denial on said grounds, denies both generally and
2 specifically each and every allegation contained therein, and specifically denies that plaintiff is
3 entitled to damages in any amount whatsoever.

4 85. In answer to the allegations contained in paragraph 74 of the First Amended
5 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
6 truth of the averment and basing his denial on said grounds, denies both generally and
7 specifically each and every allegation contained therein, and specifically denies that plaintiff is
8 entitled to damages in any amount whatsoever.

9 SIXTH CAUSE OF ACTION

10 86. In answer to the allegations contained in paragraph 86, defendant repeats, re-
11 alleges, and incorporates by reference each and every response interposed to the allegations set
12 forth in paragraphs 1 through 85 inclusive.

13 87. In answer to the allegations contained in paragraph 87 of the First Amended
14 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the averment and basing his denial on said grounds, denies both generally and
16 specifically each and every allegation contained therein.

17 88. In answer to the allegations contained in paragraph 88 of the First Amended
18 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
19 truth of the averment and basing his denial on said grounds, denies both generally and
20 specifically each and every allegation contained therein.

21 89. In answer to the allegations contained in paragraph 89 of the First Amended
22 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
23 truth of the averment and basing his denial on said grounds, denies both generally and
24 truth of the averment and basing his denial on said grounds, denies both generally and
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specifically each and every allegation contained therein.

90. In answer to the allegations contained in paragraph 90 of the First Amended Complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the averment and basing his denial on said grounds, denies both generally and specifically each and every allegation contained therein.

91. In answer to the allegations contained in paragraph 91 of the First Amended Complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the averment and basing his denial on said grounds, denies both generally and specifically each and every allegation contained therein, and specifically denies that plaintiff is entitled to damages in any amount whatsoever.

SEVENTH CAUSE OF ACTION

92. In answer to the allegations contained in paragraph 92, defendant repeats, re-alleges, and incorporates by reference each and every response interposed to the allegations set forth in paragraphs 1 through 91 inclusive.

93. In answer to the allegations contained in paragraph 93 of the First Amended Complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the averment and basing his denial on said grounds, denies both generally and specifically each and every allegation contained therein.

94. In answer to the allegations contained in paragraph 94 of the First Amended Complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the averment and basing his denial on said grounds, denies both generally and specifically each and every allegation contained therein.

95. In answer to the allegations contained in paragraph 95 of the First Amended

1 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
2 truth of the averment and basing his denial on said grounds, denies both generally and
3 specifically each and every allegation contained therein.

4 96. In answer to the allegations contained in paragraph 96 of the First Amended
5 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
6 truth of the averment and basing his denial on said grounds, denies both generally and
7 specifically each and every allegation contained therein.

8 97. In answer to the allegations contained in paragraph 97 of the First Amended
9 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
10 truth of the averment and basing his denial on said grounds, denies both generally and
11 specifically each and every allegation contained therein, and specifically denies that plaintiff
12 suffered monetary damages in any amount whatsoever.

13 98. In answer to the allegations contained in paragraph 98 of the First Amended
14 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the averment and basing his denial on said grounds, denies both generally and
16 specifically each and every allegation contained therein.

17 99. In answer to the allegations contained in paragraph 99 of the First Amended
18 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
19 truth of the averment and basing his denial on said grounds, denies both generally and
20 specifically each and every allegation contained therein, and specifically denies that plaintiff is
21 entitled to damages in any amount whatsoever.

22 100. In answer to the allegations contained in paragraph 100 of the First Amended
23 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
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1 truth of the averment and basing his denial on said grounds, denies both generally and
2 specifically each and every allegation contained therein.

3 EIGHTH CAUSE OF ACTION

4 101. In answer to the allegations contained in paragraph 92, defendant repeats, re-
5 alleges, and incorporates by reference each and every response interposed to the allegations set
6 forth in paragraphs 1 through 100 inclusive.

7 102. In answer to the allegations contained in paragraph 102 of the First Amended
8 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
9 truth of the averment and basing his denial on said grounds, denies both generally and
10 specifically each and every allegation contained therein.

11 103. In answer to the allegations contained in paragraph 103 of the First Amended
12 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
13 truth of the averment and basing his denial on said grounds, denies both generally and
14 specifically each and every allegation contained therein.

15 104. In answer to the allegations contained in paragraph 104 of the First Amended
16 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
17 truth of the averment and basing his denial on said grounds, denies both generally and
18 specifically each and every allegation contained therein.

19 105. In answer to the allegations contained in paragraph 105 of the First Amended
20 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
21 truth of the averment and basing his denial on said grounds, denies both generally and
22 specifically each and every allegation contained therein.

23 106. In answer to the allegations contained in paragraph 106 of the First Amended
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1 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
2 truth of the averment and basing his denial on said grounds, denies both generally and
3 specifically each and every allegation contained therein.

4 107. In answer to the allegations contained in paragraph 107 of the First Amended
5 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
6 truth of the averment and basing his denial on said grounds, denies both generally and
7 specifically each and every allegation contained therein, and specifically denies that plaintiff is
8 entitled to damages in any amount whatsoever.

9 108. In answer to the allegations contained in paragraph 108 of the First Amended
10 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
11 truth of the averment and basing his denial on said grounds, denies both generally and
12 specifically each and every allegation contained therein, and specifically denies that plaintiff is
13 entitled to damages in any amount whatsoever.

14 109. In answer to the allegations contained in paragraph 109 of the First Amended
15 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
16 truth of the averment and basing his denial on said grounds, denies both generally and
17 specifically each and every allegation contained therein.

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19 NINTH CAUSE OF ACTION

20 110. In answer to the allegations contained in paragraph 110, defendant repeats, re-
21 alleges, and incorporates by reference each and every response interposed to the allegations set
22 forth in paragraphs 1 through 109 inclusive.

23 111. In answer to the allegations contained in paragraph 111 of the First Amended
24 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
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1 truth of the averment and basing his denial on said grounds, denies both generally and
2 specifically each and every allegation contained therein.

3 112. In answer to the allegations contained in paragraph 105 of the First Amended
4 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
5 truth of the averment and basing his denial on said grounds, denies both generally and
6 specifically each and every allegation contained therein.

7 113. In answer to the allegations contained in paragraph 113 of the First Amended
8 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
9 truth of the averment and basing his denial on said grounds, denies both generally and
10 specifically each and every allegation contained therein.

11 114. In answer to the allegations contained in paragraph 114 of the First Amended
12 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
13 truth of the averment and basing his denial on said grounds, denies both generally and
14 specifically each and every allegation contained therein.

15 115. In answer to the allegations contained in paragraph 115 of the First Amended
16 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
17 truth of the averment and basing his denial on said grounds, denies both generally and
18 specifically each and every allegation contained therein, and specifically denies that plaintiff is
19 entitled to damages in any amount whatsoever.

20 116. In answer to the allegations contained in paragraph 116 of the First Amended
21 Complaint, defendant is without knowledge or information sufficient to form a belief as to the
22 truth of the averment and basing his denial on said grounds, denies both generally and
23 specifically each and every allegation contained therein.
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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

117. The pleading denominated as the First Cause of Action fails to set forth facts constituting a claim for relief against this answering defendant.

SECOND AFFIRMATIVE DEFENSE

118. The pleading denominated as the Second Cause of Action fails to set forth facts constituting a claim for relief against this answering defendant.

THIRD AFFIRMATIVE DEFENSE

119. The pleading denominated as the Third Cause of Action fails to set forth facts constituting a claim for relief against this answering defendant.

FOURTH AFFIRMATIVE DEFENSE

120. The pleading denominated as the Fourth Cause of Action fails to set forth facts constituting a claim for relief against this answering defendant.

FIFTH AFFIRMATIVE DEFENSE

121. The pleading denominated as the Fifth Cause of Action fails to set forth facts constituting a claim for relief against this answering defendant.

SIXTH AFFIRMATIVE DEFENSE

122. The pleading denominated as the Sixth Cause of Action fails to set forth facts constituting a claim for relief against this answering defendant.

SEVENTH AFFIRMATIVE DEFENSE

123. The pleading denominated as the Seventh Cause of Action fails to set forth facts constituting a claim for relief against this answering defendant.

EIGHTH AFFIRMATIVE DEFENSE

124. The pleading denominated as the Eighth Cause of Action fails to set forth facts constituting a claim for relief against this answering defendant.

NINTH AFFIRMATIVE DEFENSE

125. The pleading denominated as the Ninth Cause of Action fails to set forth facts constituting a claim for relief against this answering defendant.

TENTH AFFIRMATIVE DEFENSE

126. Defendant is informed and believes and based thereon alleges that Plaintiff is guilty of contributory negligence and as a result, is the author of her own injury and any damages she alleges exist.

ELEVENTH AFFIRMATIVE DEFENSE

127. Defendant is informed and believes and based thereon alleges that Plaintiff is guilty of comparative negligence and, as a result, any damages which Plaintiff might be able to establish are reduced by Plaintiff's comparative negligence.

TWELFTH AFFIRMATIVE DEFENSE

128. As a separate and additional defense to the Complaint, defendant alleges that plaintiff failed to mitigate whatever damages, if any, she may have suffered.

THIRTEENTH AFFIRMATIVE DEFENSE

129. Defendant alleges that even assuming, for the sake of argument, that the Defendant acted or made any misrepresentations or failed to act as alleged in the First Amended Complaint, plaintiff did not justifiably rely upon such alleged acts, misrepresentations, failures to act or omissions as identified in the First Amended Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

130. Defendants allege that the relief sought by plaintiff should be denied based upon plaintiff's fraudulent conduct.

FIFTEENTH AFFIRMATIVE DEFENSE

131. All employees of Executive Financial were instructed to obtain and utilize, in preparing loan applications, only that information provided by the client seeking the loan and to have the client seeking the loan represent to them, and confirm, that the information provided was correct.

132. Defendant could not personally review each and every loan application nor independently confirm with the client seeking the loan that every representation in the loan application was true and correct.

133. Defendant, as the broker of record for the mortgage broker, relied upon the fact that a client seeking the loan signed all loan application documentation and by doing so, represented that the information provided was true and correct, ratified that fact by executing said documentation, and represented to cross defendant that cross defendant was entitled to rely upon the truth of the information set forth.

134. Defendant is informed and believes, and thereupon alleges, that no personnel from Executive Financial ever met face to face with the plaintiff and that all communications relating to any loan application submitted by plaintiff which resulted in a loan was handled by mail and through telephonic contact, with the signing of all documentation handled by an independent third party in the Bay area.

135. Defendant was not, and is not, an owner of Executive Financial, being an independent contractor solely for the purpose of functioning as the responsible managing

1 employee for license purposes only, and tasked with providing over-all direction and control of
2 the loan operation as provided by law.

3 136. Defendant alleges that if any information was placed in any loan application by
4 any employee of Executive Financial which was not provided by plaintiff, any such action was
5 not within the course and scope of said individual's employment, was not in accordance with the
6 instructions from defendant, was concealed from defendant and Executive Financial, was for
7 personal purposes of any such employee and not done for the benefit of or on directions from or
8 with the consent and/or permission of Executive Financial or defendant.

9 137. Any action by any personnel of Executive Financial which resulted in the
10 inclusion, in plaintiff's loan application, of any false or incorrect information, although provided
11 by or ratified by plaintiff by execution of said application, constitutes a substantial deviation
12 from the employment duties of said individual, is not an expectable outgrowth of said
13 employment, is not inherent in the working environment of said employee, is not typical of or
14 broadly incidental to Executive Financial's business, or foreseeable as an action by any
15 employee of Executive Financial, specifically because the instructions and directions from
16 Executive Financial and defendant prohibited the inclusion of any information in a loan
17 application which was not provided by, represented as true by, and/or ratified by the loan
18 applicant.
19

20 SIXTEENTH AFFIRMATIVE DEFENSE

21 138. By executing the loan documentation for the loan which is the basis for this
22 litigation, plaintiff represented that all information provided was true and correct.

23 139. To the extent that the loan application contains any information which is not true
24 and correct, the plaintiff is responsible for making such representations and if alleged to be
25

1 fraudulent, can not take advantage of her own fraud in alleging damages.

2 SEVENTEENTH AFFIRMATIVE DEFENSE

3 140. By executing the loan documentation for the loan which is the basis for this
4 litigation, plaintiff represented that all information provided was true and correct.

5 141. To the extent that the loan application contains any information which is not true
6 and correct, the plaintiff has ratified that information as true and correct.

7 EIGHTEENTH AFFIRMATIVE DEFENSE

8 142. By executing the loan documentation for the loan which is the basis for this
9 litigation, plaintiff represented that all information provided was true and correct.

10 143. To the extent that the information plaintiff represented to Executive Financial and
11 to defendant, and ratified by her execution of the loan application, as being true and correct is
12 false, defendant has committed a fraud on Executive Financial and defendant.

13 144. As a result of any fraud committed by plaintiff against Executive Financial and
14 defendant, any claims of damage by defendant off-set any claims of damages sustained by
15 Executive Financial and defendant.

16 NINETEENTH AFFIRMATIVE DEFENSE

17 145. Defendant SPEAR was the broker of record for Defendant Executive Financial.

18 146. Defendant SHAI MOSHE was an employee of Defendant Executive Financial.

19 147. As a matter of law, Defendant SPEAR's only duty as a broker for Executive
20 Financial was to Executive Financial to supervise its employees.

21 148. Executive Financial has ceased to do business.

22 149. Defendant SPEAR had no contact, direct or indirect, with Plaintiff NEVIS.

23 150. Plaintiff NEVIS alleges that she discussed her need for a loan with Defendant
24
25

1 SHAI MOSHE who offered, on behalf of Executive Financial, to help her obtain a loan.

2 151. Plaintiff NEVIS had no direct or indirect contact with Defendant SPEAR at any
3 time.

4 152. The only representations alleged by Plaintiff NEVIS were allegedly made by
5 Defendant SHAI MOSHE, acting as an employee of Executive Financial.

6 153. As a matter of law, the only claims by Plaintiff NEVIS with regard to any
7 representations made to her are against Defendant SHAI MOSHE and/or Defendant Executive
8 Financial.

9 154. As a matter of law, because Defendant SPEAR's only obligation is to Defendant
10 Executive Financial, only Executive Financial can make a claim against Defendant SPEAR.

11 155. As a matter of law, Defendant SPEAR had no duty to Plaintiff NEVIS and no
12 obligation in favor of Plaintiff NEVIS arises against Defendant SPEAR as a result of any
13 interaction between Plaintiff NEVIS and any employee of Executive Financial.
14

15 TWENTIETH AFFIRMATIVE DEFENSE

16 156. Plaintiff NEVIS alleged that Defendant SHAI MOSHE represented to her that he
17 could obtain a loan for her which would meet the following criteria: that it would be a no cost
18 loan, that monthly payments would be significantly lower than her present payments, that her
19 existing debts would be paid by the new loan, that the loan would provide cash to the borrower,
20 and that the loan would be at a fixed rate.

21 157. All the representations alleged are with regard to future events.

22 158. No fraud or misrepresentation claim can be made based on representations
23 dealing with future events; representations sufficient to support a fraud or misrepresentation
24 claim must be with regard to present or past facts.
25

TWENTY-FIRST AFFIRMATIVE DEFENSE

159. Executive Financial was licensed and operated as a mortgage loan broker.

160. Executive Financial was not licensed and did not operate as a lender.

161. The representations alleged by Plaintiff NEVIS to have been made by Defendant SHAI MOSHE, that he could obtain a loan for her which would meet the following criteria: that it would be a no cost loan, that monthly payments would be significantly lower than her present payments, that her existing debts would be paid by the new loan, that the loan would provide cash to the borrower, and that the loan would be at a fixed rate are, at best, representations regarding the actions of a third party, the lender, New Century Mortgage Corporation.

162. The only connection between Executive Financial and New Century Mortgage Corporation was an agreement pursuant to which New Century Mortgage Corporation would accept loan applications from Executive Financial and, upon making a loan to a borrower whose application was provided by Executive Financial, would pay a fee to Executive Financial.\

163. Executive Financial had no control over New Century Mortgage Corporation and over any terms and conditions of any loans it might offer to prospective borrowers.

164. A cause of action for fraud and misrepresentation can not be grounded on a representation made with regard to future actions which might be taken by a third party.

TWENTY-SECOND AFFIRMATIVE DEFENSE

165. Prior to submitting a loan application to Executive Financial, the property owned by Plaintiff NEVIS was encumbered by a loan and trust deed in favor of Washington Mutual with a monthly payment of \$4,730.

166. Plaintiff NEVIS alleges that her monthly income is from Social Security in the sum of \$1,050.

1 167. Absent additional income or other financial resources, the income alleged by
2 Plaintiff NEVIS was insufficient to pay the loan payments due to Washington Mutual.

3 168. Absent other factors not known to exist, Plaintiff NEVIS's alleged income being
4 insufficient to pay the payments due to Washington Mutual, and without additional income or
5 other financial resources to make said payments, Plaintiff NEVIS would default on the
6 Washington Mutual loan and a foreclosure would be expected to follow.

7 169. Assuming that Plaintiff NEVIS defaulted on the Washington Mutual loan and a
8 default would follow, the threatened foreclosure in this case, based on the loan acquired from
9 New Century Mortgage Corporation would not cause any damage to Plaintiff NEVIS which
10 would not have occurred without the loan.

11 TWENTY-THIRD AFFIRMATIVE DEFENSE

12 170. By executing the loan documentation for the loan which is the basis for this
13 litigation Plaintiff NEVIS represented to all persons interested therein, that all information
14 provided was true and correct.

15 171. To the extent that the loan application contains any information which is not true
16 and correct, Plaintiff NEVIS is responsible for making such representations and if alleged to be
17 fraudulent, can not take advantage of her own fraud in alleging damages.

18 172. Plaintiff NEVIS can not claim damages against Defendant SPEAR based on
19 actions for which she is responsible.

20 TWENTY-FOURTH AFFIRMATIVE DEFENSE

21 173. By executing the loan documentation for the loan which is the basis for this
22 litigation Plaintiff NEVIS represented that all information provided was true and correct.

23 174. To the extent that the loan application contains any information which Plaintiff
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1 NEVIS now claims is not true and correct, Plaintiff NEVIS ratified that information as true and
2 correct by signing and submitting the application..

3 175. Because Plaintiff NEVIS ratified the representations in the loan application as
4 true, she can not claim to have been damaged by the falsity of said representations.

5 WHEREFORE, defendant prays judgment as follows:

- 6 1. That plaintiff take nothing by her complaint against defendant;
- 7 2. That if plaintiff is found to have suffered any damages, those damages be reduced
8 by reason of comparative and/or contributory negligence.
- 9 3. for costs of suit incurred
- 10 4. for such other and further relief as the court deems just and proper,.

11 Dated: June 20, 2008

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16 Robert A. Clinco, Attorney for Defendant
17 John B. Spear
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